

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0229P**

**Sales and Use Tax  
For Tax Years 2000 and 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration—Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 2.2-2-2; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

**II. Tax Administration—Registration Fee**

**Authority:** IC 6-2.5-8-1

Taxpayer protests imposition of the registration fee for a registered retail merchant's certificate.

**STATEMENT OF FACTS**

Taxpayer is a for-profit day care center. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments of sales and use taxes for 2000 and 2001. Taxpayer paid a portion of the assessments, but protested the imposition of a ten percent negligence penalty and retail merchant's registration fee. Further facts will be provided as necessary.

**I. Tax Administration—Negligence Penalty**

**DISCUSSION**

Taxpayer protests the imposition of a ten percent negligence penalty on assessments for tax years 2000 and 2001. The Department imposed the negligence penalty due to underpayment of sales and use tax for the two years in question, as provided in IC 6-8.1-10-2.1.

Taxpayer paid the assessments, but did not pay the penalty amounts. Taxpayer held fundraising sales in the form of catalog sales and did not collect sales tax at the time of the sales, as required by 45 IAC 2.2-2-2. Taxpayer explains in its protest that it did not intend to be a retail merchant and that it ceased its retail activities when it learned of the tax consequences.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Also, 45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

While taxpayer may not have intended to act as a retail merchant, 45 IAC 15-11-2(b) explains that ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Taxpayer has not affirmatively established that failure to pay the full amount of tax due for 2000 and 2001 was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

### **FINDING**

Taxpayer's protest is denied.

## **II. Tax Administration—Registration Fee**

### **DISCUSSION**

Taxpayer protests imposition of the twenty-five dollar (\$25) registration fee for obtaining a registered retail merchant's certificate. Taxpayer states that it will not act as a retail merchant in the future, and that forcing it to pay the registration fee will result in sales tax reports that are meaningless and ultimate cancellation of its registration number.

The Department refers to IC 6-2.5-8-1, which states in relevant part:

- (a) A retail merchant may not make a retail transaction in Indiana, unless he has applied for a registered retail merchant's certificate.
- (b) A retail merchant may obtain a registered retail merchant's certificate by filing an application with the department and paying a registration fee of twenty-five dollars (\$25) for each place of business listed on the application. The retail merchant shall also provide such security for payment as the department may require under IC 6-2.5-6-12.

Taxpayer made retail transactions in Indiana with one place of business. Therefore, taxpayer was required by IC 6-2.5-8-1 to pay a twenty-five dollar registration fee. Taxpayer's future activities are not at issue here. The fact that taxpayer will not continue to act as a retail merchant does not alter the fact that taxpayer was required to register and pay the registration fee in the first place.

### **FINDING**

Taxpayer's protest is denied.

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